

REMARKS

In the Office Action mailed April 29, 2009, claims 26, 28 and 37 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for the reasons specifically set forth in numbered paragraph 2 of the Office Action. By the foregoing proposed amendments to the claims, the Examiner will please note that all of the deficiencies noted under 35 U.S.C. §112, second paragraph, have been corrected, and the rejections of these specific claims upon this ground are now deemed to be moot.

Claims 24-26 were also rejected under 35 U.S.C. §101 because of the Examiner's belief that the claimed invention was directed to non-statutory subject matter. Specifically, the problem was in line 6 of claim 24, which includes the limitation "worn externally on the skin." By the foregoing proposed amendments to claim 24, the Examiner will please note that claim 24 has now been amended to read "configured to be worn externally on the skin." Therefore, this ground for rejecting claims 24-46 is also believed to be moot.

Claims 24, 25, 27, 31 and 35 were rejected under 35 U.S.C. §102(e) as being anticipated by Ballerstadt (US 7226414), and claims 26, 28-30, 33 and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ballerstadt in view of Wright (US 2003/0230136). For the reasons that follow, Applicants traverse both of these prior art based rejections of the claims.

Claims 24, 25, 27, 31 and 35 were rejected under 35 U.S.C. §102(e) as being anticipated by Ballerstadt (US 7226414). In relation to claim 25, the Examiner argued that Ballerstadt discloses an oscillating element excited into oscillations by an oscillating magnetic field.

Ballerstadt, however, discloses free floating magnetic particles within the sensitive fluid that are displaced within the liquid by a magnetic field. First, a magnetic particle is not an oscillating element since it is completely free and unattached to any support relative to which it

can elastically move, and would not be understood by an ordinarily skilled person to be within the normal definition of an oscillating element in the context of the present application. Even if one would incorrectly consider the magnetic particles to be an oscillating element, in Ballerstadt there is no teaching of a measurement of the oscillating behaviour of the free floating magnetic particles that would require a determination of at least a frequency and/or amplitude of a to and fro movement of the magnetic particles. Ballerstadt functions under a completely different principle based on the shear resistance to the displacement of free magnetic particles within a fluid. Ballerstadt therefore teaches in a completely different direction to the present invention, as claimed in amended claim 24.

Claims 26, 28-30, 33 and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ballerstadt in view of Wright (US 2003/0230136).

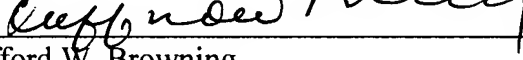
The combination of Wright and Ballerstadt is, however, based on an impermissible hindsight analysis, since the device in Wright is not adapted to be implanted, and Wright does not even describe a device that has any relation to applications in the medical field (see paragraph 0004 to 0008). Wright only mentions industrial and other non-medical applications. Moreover, the ordinarily skilled person would have no motivation to modify Ballerstadt to incorporate the teachings of Wright, since Ballerstadt and Wright function on very different principles. Wright discloses the oscillation of a cantilevered beam, whereas Ballerstadt teaches the movement of multiple free magnetic particles that are not fixed to any structure. Ballerstadt thus teaches in a completely different direction to Wright, and thus their proposed combination can only be based on impermissible hindsight based on the present invention. In this regard it should be noted that should the ordinarily skilled person have considered modifying Ballerstadt to arrive at the present invention, as claimed, this would require completely removing the

magnetic particles and substituting for them some sort of system with a cantilevered beam of Wright, in other words, by completely changing the measurement and functioning principle of Ballerstadt without any motivation to do so, whatsoever

Lastly, the Examiner will note that claim 35 has been amended to include the features of claim 36. The measurement of a decay behaviour of a rotating element in an implantable sensor is not disclosed in Ballerstadt, nor in any of the other cited prior art.

For all these foregoing reasons, Applicants respectfully request entry of the foregoing amendments, reconsideration of the present application in light thereof, and in light of the foregoing remarks, followed by an allowance of all claims now pending, as amended, over all the prior art of record.

Respectfully submitted,

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